



General Assembly

Distr.: General
24 July 2006

Original: English

Sixty-first session

Item 42 of the provisional agenda*

Return or restitution of cultural property to the countries of origin

Note by the Secretary-General

The Secretary-General hereby transmits the report of the Director-General of the United Nations Educational, Scientific and Cultural Organization on the return or restitution of cultural property to the countries of origin in accordance with General Assembly resolution 58/17 of 19 December 2003.¹

* A/61/150.

¹ In paragraph 4 (d) of its resolution 58/17 of 19 July 2004, the General Assembly decided that the item entitled "Return or restitution of cultural property to the countries of origin" would be considered every three years.



**Report of the Director-General of the United Nations
Educational, Scientific and Cultural Organization on
the action taken by the organization on the return and
restitution of cultural property to its countries of origin**

Summary

The present report, which covers a three-year period, describes the activities undertaken by the United Nations Educational, Scientific and Cultural Organization (UNESCO) aimed at facilitating the return and restitution of cultural property illicitly removed from its country of origin. In addition to promoting and assisting Member States in the national implementation of the relevant international standard-setting instruments, UNESCO has adopted a model export certificate for cultural objects, launched a Cultural Heritage Laws Database and taken steps to fulfil the recommendations adopted by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its twelfth and thirteenth sessions (held in 2003 and 2005, respectively).

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I. Introduction

1. Since the submission of the previous report by the Director-General (see A/58/314), the United Nations Educational, Scientific and Cultural Organization (UNESCO) has continued its work towards the return and restitution of illicitly removed cultural property to its countries of origin. In addressing this issue, UNESCO has promoted the relevant international standard-setting instruments, worked directly with its member States as well as partner governmental and non-governmental organizations and taken steps to raise public awareness of relevant restitution and illicit trafficking issues. In particular, efforts have been made to fulfil the recommendations adopted by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its twelfth and thirteenth sessions (held in 2003 and 2005, respectively). The recommendations adopted by the Committee at its thirteenth session are attached (see annex I).² The next session of the Committee will take place in the first half of 2007.

2. At the thirteenth session of the Committee, held in Paris from 7 to 10 February 2005, 20 of the 22 Committee members were represented. Sixty-two States members of UNESCO that are not members of the Committee were also inscribed as observers, as were two permanent observer missions to the organization, six intergovernmental organizations and two non-governmental organizations.

3. The secretariat reported to the Committee at its thirteenth session on developments since the Committee's previous session, including progress on the recommendations made at the twelfth session, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 International Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects as well as on UNESCO activities to combat illicit trafficking in cultural property. In the 15 months since the last Committee session took place, the numbers of States parties to the 1970 UNESCO Convention and the 1995 UNIDROIT Convention have risen to 109 and 27, respectively. In May 2006, UNESCO published a new concise handbook on legal and practical measures against illicit trafficking in cultural property in English, French, and Spanish. A training course in Object-ID was organized for Palestinian experts in Ramallah from 7 to 10 November 2005. On 24 June 2005, UNESCO held a joint conference with UNIDROIT on the theme "Cooperation in the fight against illicit traffic in cultural property", which featured guest speakers from UNIDROIT, Interpol and the International Council of Museums (ICOM) in celebration of the tenth anniversary of the Convention. A number of regional and subregional meetings were also organized by UNESCO to discuss in detail issues related to illicit trafficking and restitution, with the inclusion of expert participants from, for example, Interpol and ICOM and customs officials.

4. The two pending cases for restitution were reviewed by the Committee at its thirteenth session: the request by Greece for the return of the Parthenon Marbles from the United Kingdom of Great Britain and Northern Ireland, brought before the

² The previous report submitted by the Director-General in 2003 included the recommendations adopted by the Committee at its twelfth session in 2003.

Committee in 1984, and the request by Turkey for the return of the Boguskoy Sphinx from Germany, brought before the Committee in 1986.

5. Regarding the first case and pursuant to Recommendation No. 1 adopted by the Committee at its twelfth session, the Director-General renewed efforts to hold a meeting between Greece and the United Kingdom. The secretariat attended a meeting that took place between the two countries' representatives on 4 December 2003 in London during which it was clarified that (a) because of the legal status of the British Museum, which makes it independent in this regard from the Government of the United Kingdom, it is the prerogative of the Board of Trustees of the British Museum to determine the disposition of the Parthenon Marbles; and (b) the independent status of the British Museum may be changed by a law, but the Government of the United Kingdom is not currently considering a revision of the legislation on this matter.

6. The delegate from Greece and the observer from the United Kingdom presented the Committee with their respective positions and in particular highlighted the recent increase in discussions and bilateral exchanges concerning the issue. The former emphasized the importance of continuing bilateral negotiations and informed the Committee about the new policy of Greece pertaining to broader museum and academic/archaeological cooperation between Greece and the United Kingdom. The observer from the United Kingdom noted Greece's proposals and suggested that the bilateral negotiations should continue and that the subject does not need to be discussed every two years. The observer from the United Kingdom also recalled that since the British Museum was independent of the Government, it rested with the Board Trustees of the British Museum to decide on the matter. Following discussions together, the delegate from Greece and the observer from the United Kingdom jointly presented to the Committee a draft recommendation on the Parthenon Marbles that the Committee adopted (see recommendation No. 1 of annex I).

7. The Boguskoy Sphinx is located in the Berlin Museum. Following the adoption of Recommendation No. 2 by the Committee at its eleventh session, Germany and Turkey were invited to continue to meet with a view to bringing this issue to a mutually acceptable solution, and the Director-General was invited to use his good offices to assist. The secretariat offered to convene a meeting between the two States if they so wished. In his presentation to the Committee, the delegate from Turkey provided some historical background of the case, mentioned returns made in years past by Germany to Turkey of another sphinx and cuneiform tablets, and expressed a desire for progress in negotiations regarding the Boguskoy Sphinx. The observer from Germany informed the Committee that the Sphinx was inventoried in the Berlin Museum but that related documentation had been destroyed during the Second World War and that documentation contributing to the legal grounds of this case would be welcomed. Germany has also offered to provide Turkey with a replica of the Boguskoy Sphinx. Turkey and Germany jointly presented to the Committee a draft recommendation that the Committee adopted (see Recommendation No. 2 of Annex I).

8. A distinguished and more recent development is that in early 2006, the United Republic of Tanzania formally filed a request before the Committee for restitution of a Makonde mask held in Switzerland. A reply from Switzerland is expected.

II. Strategy to facilitate the restitution of stolen or illicitly exported cultural property

9. In 2003 the UNESCO General Conference, at its thirty-second session, adopted a resolution requesting the Director-General to prepare a strategy to facilitate the restitution of stolen or illicitly exported cultural property. The Committee discussed a number of initiatives to present to the Director-General for consideration when preparing his report on the matter. In particular, the strengthening of the Committee's mandate to include mediation or conciliation processes among its functions relating to the return or restitution of cultural property was discussed in detail and widely supported. Promotion of the activities of the Committee and the possibility of the Committee holding mandatory annual sessions were also discussed. The meeting proposed an international conference on return and restitution difficulties and solutions, and Greece offered to host such a meeting if funds were made available. The development of a specific communication strategy was also recommended. Concerning the issue of holding regular sessions of the Committee annually instead of every two years as currently, the Committee did not express a clear preference and noted that holding meetings annually would have budgetary implications. It was also noted that the current periodicity (Article 6 (1) of the Statutes) ensures flexibility, since the Committee may wish to convene its ordinary sessions annually should it deem it necessary. The Committee, in its Recommendation No. 3, invited the Director-General to take note of its observations when elaborating his strategy to facilitate the restitution of stolen or illicitly exported cultural property.

10. At its thirty-third session, the UNESCO General Conference reviewed the issue and decided to endorse the consolidated elements towards a strategy to facilitate the restitution of stolen or illicitly exported cultural property and to amend the Statutes of the Committee so as to add the new functions of mediation and conciliation to the Committee's mandate.

III. Model export certificate for cultural objects

11. During the thirtieth session of the Committee, the model export certificate for cultural objects, which was developed jointly by UNESCO and the World Customs Organization (WCO) as a tool to combat illicit trafficking in cultural property, was presented by the Secretariat. The Secretariat also informed the Committee that the Director-General of UNESCO and the Secretary-General of WCO were sending a joint letter and CTR-ROOM containing the model certificate to their respective member States recommending that it be adopted as the entity or in part as their national export certificate. Interpol expressed support for the wide adoption of the model export certificate. The Committee also affirmed, in general, its view as reflected in Recommendation No. 8, which supports the model export certificate. Since the recommendation was adopted, a number of countries have informed UNESCO and/or WCO that they are adopting the model export certificate as their national export certificate.

IV. Principles Relating to Cultural Objects Displaced in Relation to the Second World War

12. During the thirteenth session of the Committee, a presentation was given by the secretariat on the elaboration of a draft of the Principles Relating to Cultural Objects Displaced in Relation to the Second World War. The presentation made reference to the two expert meetings that developed the draft principles, the consideration of the item by the Committee at its twelfth session, the invitation to UNESCO member States to comment on the draft principles and procedural aspects related to whether they should be adopted by the Committee and/or submitted to the General Conference. It was reiterated that the draft principles are non-binding but are designed to facilitate bilateral inter-State negotiations, and that they are not intended to amend or abrogate existing bilateral or multilateral agreements on the subject.

13. It was noted that there have been other situations, such as colonization, that have resulted in significant losses of cultural property. The Committee observed that while the draft principles pertain only to the specific situation of the Second World War, other similar sets of principles could be developed in future to assist States in resolving disputes related to other periods of history that had seen massive displacement of cultural property from its countries of origin.

14. At the end of the discussion, the Committee decided to invite the Director-General to inscribe on the draft agenda of the thirty-third session of the General Conference a point for discussion on the draft principles, and member States' observations as compiled by the secretariat, for consideration, final revision and possible adoption of the draft principles, and recommended that appropriate intergovernmental meetings be held before the adoption. Recommendation No. 4, which was adopted by the Committee, reflects those points. Subsequently, at its thirty-third session, the General Conference decided that (a) the subject of cultural objects displaced in connection with the Second World War should be the subject of a standard-setting instrument, and (b) the form of that instrument should be a non-binding declaration of principles. The Director-General was invited to submit a draft of the declaration of principles to the General Conference at its thirty-fourth session after convening an intergovernmental meeting to elaborate such a draft. The intergovernmental meeting was held from 14 to 21 July 2006.

V. Cultural Heritage Laws Database

15. The UNESCO Cultural Heritage Laws Database was officially launched by the Committee at its thirteenth session in 2005. The database aims to make easily available, via the Internet, the cultural heritage legislation of member States. It is particularly useful to organizations, institutions, private entities or individuals that have a legal question concerning an object that may have been stolen, pillaged or illegally excavated, exported or imported and/or that may be subject to State ownership under the relevant legislation. The secretariat launched the database (*live*) online, providing its web address (www.unesco.org/culture/heritaws) and explaining its structure and content and how it functions (provided in English, French and Spanish).

16. The Committee expressed its satisfaction with this initiative, noting that it would provide a useful tool in the fight against illicit trafficking of cultural property and facilitating its restitution. The Committee emphasized the need for all countries to provide their legislation in electronic format for inclusion in the database, to produce official translations of such texts (primarily into English and French), to provide regular updates of the information on the database and to promote it. Recommendation No. 5 was adopted by the Committee on this item. To date, the database contains legislation from 40 countries. Since the adoption of the recommendation, the United States of America has provided \$201,400 in extrabudgetary funds to enhance the database software and facilitate the translation of legislation into English.

VI. Intergovernmental Committee Fund

17. The secretariat informed the Committee that the Fund, whose operational guidelines were adopted at and distributed following the Committee's previous session, remained inactive, with €29,342 (donated by Greece) still unutilized. As requested by the Committee at its twelfth session, the secretariat prepared an explanatory note on the procedure to be followed for the assessment of the submitted projects pursuant to the operational guidelines of the Fund. The document was carefully examined, revised and adopted (see annex III). Points of discussion included the possibility for projects to be submitted in one of the six languages of the General Conference and the need to promote the Fund.

VII. Afghanistan and Iraq

18. The efforts of UNESCO to retrieve and restore Afghan cultural heritage have included providing suggestions towards new national legislation dealing with cultural heritage protection, the reconstruction of the Kabul National Museum, discussions with officials of the Netherlands and the United Kingdom on seized Afghan cultural objects as to the best methods for their restitution and campaigns to raise public awareness on the trade of illicitly trafficked Afghan cultural heritage. UNESCO and Interpol cooperate in providing information on objects stolen from the Kabul Museum for inclusion in the Interpol database.

19. With regard to Iraq, the meeting of the International Coordination Committee for the safeguarding of the Cultural Heritage of Iraq was held from 22 to 23 June 2000; projects under the United Nations Development Group Trust Fund for Iraq are under way and some have been completed, and a training course for Iraqis on the Object-ID standard for identifying cultural objects has taken place. Cooperation with Interpol includes the maintenance of a database of stolen Iraqi cultural property and the creation of the Interpol expert group on stolen cultural property (both established in partnership with UNESCO).

20. The delegations of Afghanistan and Iraq (with members of the Committee) prepared a draft recommendation on the cultural heritage of Afghanistan and Iraq concerning the implementation of initiatives (training and technical assistance) aimed at strengthening their national capacities to protect it. Following the discussion, the Committee adopted Recommendation No. 8.

VIII. Conclusions

21. The matter of restitution or return to the country of origin of cultural objects that have been misappropriated or illicitly trafficked can be legally, factually and historically complex, as well as politically and socially sensitive. UNESCO, through the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, contributes to the specific issue of restitution by facilitating bilateral negotiations thereon between member States and also addresses the root of the problem by working with its member States and partners to combat illicit trafficking. While UNESCO provides normative instruments (such as conventions), a forum for discussion (such as the Committee), information and training on the issues (such as publications, regional meetings and Object-ID training) and practical tools to assist its member States (such as the legislation database or model export certificate), it remains up to the States themselves to be fully engaged and to develop and implement integrated and comprehensive national policies to properly address those issues. Progress is certainly being made, as a majority of States are now party to the 1970 UNESCO Convention, have developed inventories, implemented security measures and undertaken public information campaigns. Greater attention is also being paid to specific cases of restitution requests, notably directed towards museums in the west that have important antiquities collections. Each such case is entirely unique and negotiations between the parties are private and complex. UNESCO, if requested by a member State, provides information on and assistance to discussions thereon within its mandate.

IX. Recommendations

22. Member States that have not already done so should promptly consider joining:

(a) The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (and its two Protocols of 1954 and 1999);

(b) The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;

(c) The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage;

(d) The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

23. Member States should revise and strengthen national legislation in order to better protect cultural properties by addressing issues that include but are not limited to:

(a) Establishing State ownership of any cultural property not yet excavated or illicitly excavated;

(b) Establishing clear sanctions for violations;

(c) Regulating the excavation of archaeological sites;

- (d) Establishing effective export and import regimes and controls;
- (e) Establishing a national inventory of cultural properties.

24. Member States are encouraged to develop a strong national policy specific to cultural heritage protection that includes, among other things, coordination between relevant ministries, training of professionals in the field, cooperation with international and regional agencies and public awareness campaigns on the need to protect cultural heritage and to fight against illicit trafficking.

25. Member States are requested to undertake specific practical measures in order to better protect cultural heritage, including but not limited to:

- (a) Establishing inventories using the Object-ID standard as a minimum level of identification;
- (b) Using export certificates, and considering the UNESCO/WCO model export for cultural objects;
- (c) Posting relevant national legislation on the UNESCO Cultural Heritage Laws Database;
- (d) Providing specialized training to police and customs agents;
- (e) Promptly reporting all thefts to Interpol and furnishing the appropriate information and photographs;
- (f) Encouraging dealers to keep registries of all purchases and sales of cultural objects including all relevant information on such transactions;
- (g) Monitoring sales of cultural objects on the Internet;
- (h) Ensuring the broad use of anti-theft and other security measures;
- (i) Promoting the UNESCO international code of ethics for dealers in cultural property.

Annex I

Recommendations of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its thirteenth session

7-10 February 2005, Paris

Recommendation No. 1

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation.

Expressing its concern for the resolution of the issue of the Parthenon Marbles,

Acknowledging past UNESCO recommendations regarding the return of the Parthenon Marbles in London to their country of origin,

1. *Takes note of the meeting between the Ministries of Culture of Greece and the United Kingdom of Great Britain and Northern Ireland attended by a UNESCO representative in 2003 and a meeting in 2005;*

2. *Takes note of the continuing cooperation between the British Museum and Greek museums which will serve as a model for a collaboration on the display and presentation of the Parthenon Marbles;*

3. *Takes note of the construction of the new Acropolis museum; and*

4. *Invites the Director-General:*

(a) *To encourage further exchange of expert information in the areas of understanding, research and museology;*

(b) *To assist in facilitating further meetings between the United Kingdom and Greece before the next session of the Committee, with a view to resolving the issue of the Parthenon Marbles, taking into account at the same time the sensitivities of both sides.*

Recommendation No. 2

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation.

Recalling the request of Turkey for the Sphinx of Boguskoy, which is currently on display in the Berlin Museum.

Noting the legal and cultural arguments that have been made by both States concerned over a number of years.

Recalling the previous recommendations adopted by the Committee on this question at its sixth, tenth, eleventh and twelfth sessions.

Aware of the continuing concern of Turkey for the long awaited resolution of the issue of the Sphinx,

Noting also that the 7,400 cuneiform tablets which were part of the original request of 1987 of Turkey to the German Democratic Republic were returned,

Expresses its hope that the pending request of Turkey with regard to the issue of the Sphinx will be solved through bilateral negotiations,

Takes note of the fact that the bilateral negotiations on this issue which took place on 19 November 2002, in Berlin, did not reach a solution,

1. *Invites* both parties to continue comprehensive bilateral negotiations with a view to bringing this issue to a mutually acceptable solution,

2. *Also invites* the Director-General to continue his good offices towards the resolution of this issue and to report to the Committee at its fourteenth session.

Recommendation No. 3

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation:

Considering that resolution 38, which was adopted by the UNESCO General Conference at its thirty-second session, invited the Director-General *inter alia*, to present to the UNESCO Executive Board a strategy to facilitate the restitution of stolen or illicitly exported cultural property, and that paragraph 9 of the resolution makes specific references to the mandate and functioning of the Intergovernmental Committee,

Noting that the Director-General had expressed the view that it would be more effective to have the Committee's observations on resolution 38 with a view to considering them when elaborating a strategy to submit to the Executive Board at its one hundred seventy-first session,

Recalling the current mandate and functioning of the Committee as set forth in its Statutes and Rules of Procedure,

1. *Invites* the Director-General to take note of the following observations when elaborating a strategy to facilitate the restitution of stolen or illicitly exported cultural property pursuant to resolution 38:

(a) The Committee is supportive of the proposition to strengthen its mandate, *inter alia* in terms of proposals of mediation and conciliation. While acknowledging that such procedures require the consent of both parties concerned to enter into the process and are not binding on them, such tools can expand the role of the Committee and provide UNESCO member States with more options from which to choose, without prejudice to still other means of resolving disputes concerning the return or restitution of cultural property.

(b) The mediation or conciliation procedure can be initiated in one of two ways, either by the concerned parties following a recommendation by the Committee or directly by the concerned parties.

(c) The role of mediator may be conferred on one or more individuals chosen by the concerned parties and could include but not be limited to any of the following:

(i) A representative of one or more State(s) member(s) of the Committee;

- (ii) A qualified representative of the UNESCO secretariat, or
- (iii) An outside person(s), institution, or other body pre-selected by the Committee;
- (d) Available, recognized models for the settlement of disputes should be considered for useful characteristics that could be drawn from them if rules of conciliation specific to cases of return or restitution of cultural property are to be developed;
- (e) The role of conciliator should be conferred on an individual or group of individuals chosen by the parties for that purpose rather than on the Committee as a whole or the secretariat;
- (f) The mediation and conciliation procedures should be autonomous and not prejudice other like procedures. They should be conducted with confidentiality and transparency and in accordance with general principles of fairness, impartiality, cooperation in good faith and international cultural property law. The parties agreeing to this procedure should participate in a motivated, loyal, responsible manner and should equally share the responsibility of its success or lack thereof;
- (g) The parties participating in a mediation or conciliation procedure should equally bear the costs thereof unless the services of the mediator or conciliator are provided on a voluntary basis, the costs are covered by another organization or the parties make some other agreement on sharing costs;
- (h) A time limit, beyond which the issue that has not been resolved will no longer be considered subject to conciliation and mediation, should not be set by the Committee. However, the body or individual conducting the mediation or conciliation procedure may, with the agreement of the parties involved, set a time limit for the specific procedure under way. The parties concerned shall report on the procedure to the following session of the Committee;
- (i) Promotion of the activities of the Committee could be ensured by, *inter alia*:
 - (i) Information dissemination (publications, websites and media exposure);
 - (ii) Publicizing eventual use and success of the International Fund of the Committee;
 - (iii) Hosting an international conference on the difficulties and solutions involved in return and restitution (if funds are made available);
 - (iv) Developing regional frameworks to guide the organization of national and regional seminars in the field of return and restitution of or illicit trafficking in cultural property;
 - (v) Developing a communications strategy to raise the attention of the media and the public at large and engage them in a proactive manner;
 - (j) With respect to mandatory annual sessions of the Committee, no clear preference was expressed.

Recommendation No. 4

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation.

Recalling that Recommendation No. 7, which was adopted by the Committee at its tenth session, among other things invited the Director-General to convene a working group of experts on the settlement of disputes concerning cultural objects displaced in relation to the Second World War.

Noting that two meetings of experts (held in Paris in May 2000 and December 2002) on this issue resulted in the elaboration of non-legally binding (soft law) draft principles relating to cultural objects displaced in relation to the Second World War.

Noting further that following the adoption by the Committee at its twelfth session of Recommendation No. 7, which among other things invited all UNESCO member States to provide the secretariat with their observations on the draft principles in order to make them available to the Committee at its thirteenth session, the secretariat then received nine sets of observations,

Thanking the States that provided comments for their observations,

Emphasizing that the main aim of the draft principles is to facilitate bilateral or multilateral negotiations of the settlement of disputes concerning cultural objects displaced in relation to the Second World War and that they are not intended to replace, modify or abrogate existing bilateral or multilateral agreements on this subject,

Acknowledging the richness of and the varied positions that emerged from the discussion of this sensitive and complex subject,

1. *Approves* in principle the draft principles as they stand and takes note of the discussion thereon as well as the written comments provided by UNESCO member States pursuant to the above-mentioned Recommendation No. 7 (adopted at the twelfth session);

2. *Invites* the Director-General, when transmitting the report of the Committee to the General Conference, to inscribe on the draft agenda of the thirty-third session of the General Conference a point for discussion on the draft principles and member States' observations as compiled by the secretariat, for consideration, final revision and possible adoption of the draft principles and recommends that appropriate intergovernmental meetings be held before their adoption;

3. *Invites* all member States to forward to the secretariat by 1 June 2005 their observations on the draft principles for consideration in a compiled form by the General Conference at its thirty-third session;

4. *Decides* to submit to the General Conference at its thirty-third session the draft principles for consideration, final revision and possible adoption.

Recommendation No. 5

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation.

Aware that international availability of national cultural heritage legislation is a priority since it offers better protection to cultural property,

Recalling that Recommendation No. 5, which was adopted by the Committee at its twelfth session, among other things invited the Director-General to establish and maintain on the UNESCO website a legislation database that includes cultural heritage legislation from all member States as well as links to their relevant websites, to request member States to cooperate fully in this endeavour and to provide legal translations of submitted legislation, primarily into French and English, for inclusion in the database;

Noting that the project of the creation of the legislation database received wide support in Commission IV of the thirty-second General Conference;

Noting further the Director-General's circular letter 36/94 of December 2001 which announced the establishment of the UNESCO Cultural Heritage Laws Database and invited UNESCO member States to provide to the secretariat in electronic format their cultural heritage legislation, import and/or export certificate where appropriate, official translations of legislation as available, contact information and website links, along with authorization for inclusion of the foregoing on the database;

1. *Invites* the Director-General to:

(a) Further promote in all possible ways the UNESCO Cultural Heritage Laws Database, including the creation of a budgetary line in the UNESCO ordinary budget for the Culture Sector in order to ensure on a regular basis the necessary human and financial resources for the development and maintenance of the UNESCO Cultural Heritage Laws Database, especially for the translation of texts not submitted in English or French;

(b) Send a reminder letter to member States on a regular basis inviting them to submit their legislation if they have not already done so, and for those member States that have submitted legislation, to confirm that the information on the website is still current and correct;

2. *Invites* UNESCO member States to:

(a) Support the creation of a priority budgetary line in the UNESCO ordinary budget for the Culture Sector in order to ensure on a regular basis the necessary human and financial resources for the development and maintenance of the UNESCO Cultural Heritage Laws Database;

(b) Provide extrabudgetary contributions to the UNESCO Cultural Heritage Laws Database;

(c) Provide the secretariat with electronic versions of their national cultural heritage legislation in compliance with the Director-General's circular letter 36/94;

(d) Ensure that notice of any amendment to, change in or adoption of new legislation in this field is provided to the secretariat so that the UNESCO Cultural Heritage Laws Database is kept up to date;

(e) Provide official legal translations of their legislation into other languages, primarily French and English, for inclusion in the database.

Recommendation No. 6

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation.

Aware of the Memorandum of Understanding signed in 2000 between UNESCO and the World Customs Organization that provides a framework for cooperation to combat illicit trafficking in cultural property,

Considering the practical and legal benefit that a model export certificate for cultural objects would bring to States in the fight against illicit trafficking in cultural property in general, and to customs officers specifically in their work, if it is extensively adopted worldwide and therefore operates as a standard,

Noting the joint work of the UNESCO and World Customs Organization secretariats in elaborating the Model Export Certificate for Cultural Objects and corresponding Explanatory Notes,

1. Invites the Director-General to promote the Model Export Certificate for Cultural Objects and its Explanatory Notes and to recommend to UNESCO member States to consider adopting it as they deem appropriate;

2. Invites UNESCO member States to consider:

(a) Adopting, in its entirety or in part, the Model Export Certificate for Cultural Objects as their national export certificate within the ambit of their national law for such specific objects;

(b) Providing specialized training to customs and police officials dealing in the movement of cultural objects so as to facilitate a diligent surveillance and control thereof;

3. Invites UNESCO member States to report to the secretariat information concerning the application of the Model Export Certificate for Cultural Objects.

Recommendation No. 7

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation.

Considering that resolution 27, which was adopted by the UNESCO General Conference at its thirtieth session, invited the Director-General to establish the Fund of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation within UNESCO financed by voluntary contributions and designed to finance specific projects submitted to the Committee,

Recalling the Director-General's 2001 Appeal for donations to the Fund,

Thanking the Government of Greece for the first financial contribution to the Fund,

Considering further the operational guidelines, sample project document and model for the presentation of projects adopted by the Committee during its twelfth session, as well as the procedure to be followed for the assessment of projects adopted by the Committee at its thirteenth session,

1. *Invites* UNESCO member States and others to make voluntary donations to the Fund;
2. *Invites* the Director-General to continue to ensure the effective promotion and management of the Fund;
3. *Invites* the Director-General to produce a promotional brochure that will raise awareness of the Fund so as to encourage contributions to the Fund, and to explain the conditions and procedure for presenting a project thereto.

Recommendation No. 8

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Recalling the gravity of the post-conflict situations in Afghanistan and Iraq;

Reiterating the importance of the follow-up of those situations;

Encouraging the strengthening and continuation of the initiatives already undertaken by UNESCO, Interpol, the Italian Carabinieri and others;

1. *Invites* the Director-General, in the case of Iraq, to:
 - (a) Establish a group of international experts who will evaluate the situation of the most important sites;
 - (b) Reinforce the implementation of initiatives already established, including:
 - (i) The delivery of technical means (communications and transportation) at endangered sites;
 - (ii) The training of personnel responsible for protection of cultural heritage; and
 - (iii) The database, which UNESCO will make available to States, organizations and interested bodies;
2. *Invites* the Director-General, in the case of Afghanistan, to:
 - (a) Facilitate the delivery of technical means (communication and transportation) to endangered sites;
 - (b) Contribute to the training of personnel responsible for the protection of cultural heritage;
 - (c) Reinforce the implementation of initiatives already established, including:
 - (i) The group of international experts who will evaluate the situation of the most important sites; and
 - (ii) The database, which UNESCO will make available to States, organizations and interested bodies;

3. *Invites* the secretariat to provide a comprehensive report on the above to the next session of the Committee.

Recommendation No. 9

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation.

Recalling its role to foster public information campaigns on the real nature, scale and scope of the problem of restitution or return of cultural property to its countries of origin,

Concerned by the continuing and increasing illicit traffic in cultural property and the need for a more concerted, multilevel effort to combat this problem,

Noting the increasing number of requests for the return or restitution of cultural property based on both moral and legal grounds and the need for more intense action and discussion at the national, regional and international levels on these matters,

1. *Invites* the Director-General to examine the possibility of financing an international conference of experts and actors in the field of return and restitution of cultural property to analyse the existing legal and moral grounds associated with this issue, identify appropriate reinforcement of the existing legal and practical tools for and growing trends in this field, and propose future action thereon, noting the generous offer of the Government of Greece to be the venue;

2. *Invites* member States to:

(a) If they have not yet become party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, consider doing so;

(b) Provide to the secretariat detailed information on any successfully concluded case of return or restitution of cultural property, whether procured through bilateral negotiation or legal proceeding;

(c) Make use of the Object-ID standard and in particular encourage the photographing of cultural property, and wherever possible develop more thorough, scientific inventories of cultural property;

(d) Raise public awareness of the problem of illicit trafficking of cultural property and promote the International Code of Ethics for Dealers in Cultural Property;

(e) Examine the possibility of establishing concrete mechanisms or activities to create and implement regional networks for the restitution of cultural property to its countries of origin in close cooperation with law enforcement agencies (such as Interpol) under the auspices of UNESCO.

Annex II**Decision of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its thirteenth session**

7-10 February 2005, Paris

Decision, 10 February 2005

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation,

Recalling recommendation No. 6, adopted by the Committee at its twelfth session, which invites the Director-General to prepare an explanatory note on the procedure to be followed for the assessment of the submitted projects pursuant to the operational guidelines of the Fund,

Taking note of the Guidelines of the Fund adopted by the Committee at its twelfth session,

1. *Decides to adopt as procedure to be followed for the assessment of the submitted projects pursuant to the operational guidelines of the Fund, the procedure (CLT-2005/CONF/202.3), as amended by the Committee during its thirteenth session.*

Annex III

Procedure to be followed for the assessment of projects for the Fund of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

1. Upon receipt of a project by the secretariat on behalf of the Committee, the receipt will be acknowledged and it will receive a registration number. The secretariat shall inform the Chairperson of the Committee and the Director-General about it.
2. A project should be sent in one of the six languages of the General Conference; it will be considered after having been translated into one of the working languages of the secretariat.
3. The secretariat will assess if the documentation and information provided to support the project is sufficient to be considered by the Committee pursuant to the Fund guidelines, and in particular whether the requisite criteria and conditions for submitting projects set forth in sections II and III have been met. If not, the secretariat will so inform the entity that submitted the project and request complementary documentation and information.
4. Once the documentation and information are deemed sufficient in accordance with paragraph 3 above, the secretariat will prepare a preassessment of the project in terms of its possible compliance with the Fund guidelines, in particular their criteria and conditions.
5. The secretariat will communicate the results of the preassessment to the members of the Committee prior to its next scheduled session for consideration and the final assessment and decision by the Committee at that session.
6. If the project is presented for emergency funding pending the forthcoming session of the Committee and such emergency is confirmed in the assessment by the secretariat of the information and documentation provided (paragraph 3 above), the preassessment by the secretariat will be accelerated and its results submitted directly to the Chairperson of the Committee for consideration and possible decision (up to a maximum amount of \$10,000 as per section III of the Fund guidelines). The Chairperson will notify the secretariat in writing of the decision taken.
7. The secretariat will duly inform the entity that submitted the project of the final decision of the Committee or, for emergency projects, of the Chairperson. The Chairperson will report on the matter of emergency projects to the next session of the Committee.
8. For any approved project, the secretariat will inform the Director-General, confirm acceptance of the project to the entity that submitted the project, and undertake the transfer of the granted assistance and/or funds to the entity.
9. For any approved project, the entity that submitted the project must present a report on activities completed, written in one of the six languages of the General Conference, to the Committee by its next scheduled meeting or at any other date fixed by the Committee.